

strict rules applicable to any indictment or information. Having so considered the amended information, I feel that the demurrer to the first count should be sustained:

"(a) The count complains of only one profession under which the article of drug was sold, the profession that the article was sold under the name 'Cascarets.' The count calls this a profession of purity. This profession is not one of purity, but one of identity. Therefore, the count fails to allege any fact upon which to base its charge that the defendant professed a standard of purity and that the article in question fell below such standard. Hence, no charge of adulteration can be based upon this count.

"(b) The count is vague and indefinite in that it fails to disclose whether or not the name 'Cascarets' signifies that cascara sagrada is the only laxative ingredient, or whether it is merely a necessary laxative ingredient of Cascarets.

"(c) The count does not state sufficient facts to justify a verdict of guilty of adulteration within the meaning of section 8 of the Food and Drugs Act.

"The demurrer to the second count of the amended information should be sustained because:

"(a) The allegation in the last paragraph that Cascarets is a name which signifies that the active laxative ingredient of the article is obtained from the plant drug cascara sagrada and that said article was a candy, is in direct conflict with the other allegations of the count, since the count states that cascara sagrada is a drug and not a candy.

"(b) The count fails to disclose to whom the name 'Cascarets' signifies that the active laxative ingredient of the article is obtained from the plant drug cascara sagrada.

"(c) It fails to disclose whether or not it is intended to charge that cascara sagrada is the sole active laxative ingredient of Cascarets.

"(d) The count does not allege sufficient facts to sustain a conviction of a charge of misbranding within the meaning of the Food and Drugs Act.

"The demurrer to the third count of the amended information should be sustained for the reason that it is vague and indefinite in several respects, especially the following:

"(a) The phrase 'essentially candy' is vague and indefinite.

"(b) It does not charge to whom the impression that the article was essentially a preparation of cascara sagrada and was essentially candy, might be conveyed.

"(c) The count charges that the product proceeded against was 'essentially a preparation of phenolphthalein, which phrase is indefinite.

"For these reasons I am constrained to sustain the demurrer to the amended information and to each count thereof.

"It should be noted by counsel that I am not, at this time, passing upon the demurrer to the original information, nor upon the motion to strike certain parts of the same. These matters have never been argued, and I deem them of sufficient importance to ask counsel to submit arguments thereon fully before coming to any conclusion. If counsel for either side wish the court to consider these propositions, I will do so at the regular April, Wheeling term of this court.

"Counsel are directed to prepare a decree in accordance with this memorandum and submit it to the court."

M. L. WILSON, *Acting Secretary of Agriculture.*

**29252. Alleged misbranding of pharmaceuticals. U. S. v. Eugene J. Fishgoll (Missouri Products Co.). Motion to dismiss sustained.** (F. & D. No. 33963. Sample Nos. 61132-A, 61134-A, 61139-A, 61141-A, 61142-A.)

On April 22, 1935, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Eugene J. Fishgoll, trading as Missouri Products Co., at St. Louis, Mo., alleging shipment by said defendant in violation of the Food and Drugs Act on or about May 21, 1934, from the State of Missouri into the State of Ohio, of quantities of cascara sagrada, spirits of ammonia, flaxseed meal, boric acid, and sulphur which were alleged to be misbranded.

The articles were alleged to be misbranded in that certain statements, namely "2 Fl. Oz.," borne on the labels of the cascara sagrada and the spirits of ammonia, "4 Oz." on the label of the flaxseed meal, and "16 Oz." on the labels of the boric acid and the sulphur were false and misleading since they represented that each of the bottles of cascara sagrada and spirits of ammonia

contained 2 fluid ounces, that each of the packages of flaxseed meal contained 4 ounces, and that each of the packages of boric acid and sulphur contained 16 ounces; whereas the said bottles and packages did not each contain the amount declared, but did contain a less amount.

On or about January 11, 1936, the defendant filed a motion to dismiss the information on the ground that it set forth no facts sufficient to constitute a violation of any statute of the United States. The said motion was argued by counsel for the Government and the defendant and was taken under advisement by the court. On March 2, 1937, the court entered an order overruling the motion. On April 9, 1938, the court vacated the said order, granted the defendant permission to refile its motion, and sustained the motion without opinion.

M. L. WILSON, *Acting Secretary of Agriculture.*

**29253. Misbranding of Dr. Belding Skin Remidin. U. S. v. International Stock Food Co. and Erle B. Savage. Pleas of nolo contendere. Fine, \$50. (F. & D. No. 39793. Sample No. 36148-C.)**

This product was misbranded because of false and fraudulent representations regarding its curative and therapeutic effects. It was misbranded further since it was represented to be absolutely harmless; whereas it contained mercuric chloride which is not absolutely harmless to the skin.

On March 1, 1938, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the district court an information against International Stock Food Co., a corporation, and Erle B. Savage, an officer of the said corporation, alleging shipment by said defendants in violation of the Food and Drugs Act as amended, on or about March 6, 1937, from the State of Minnesota into the State of Montana of a quantity of Dr. Belding Skin Remidin which was misbranded. The article was labeled in part: "Dr. Belding Medicine Co., Minneapolis, Minn."

Analysis showed that it consisted chiefly of alcohol, water, glycerin, and a small amount of ethyl acetate and mercuric chloride.

It was alleged to be misbranded in that statements borne on the label falsely and fraudulently represented its therapeutic and curative effectiveness to help nature in restoring a healthful activity of the skin, to kill poison, to help prevent barber's itch, to help nature restore a healthful condition and to keep the skin healthy when paints and powder are used, to help nature excite the glands and pores to healthful action, to cause impurities to be expelled through the skin, and to stimulate the glands; its effectiveness as a treatment, remedy, and cure for herpes (tetter), eczema (salt rheum), rash, scald head, milk scald, any rough skin, scabies, plant poisoning, hives, scratches, barber's itch, ringworm, itching piles, parasitic diseases, dandruff, and other scaly or scabby eruptions of the skin; and its effectiveness as an absorbent.

It was alleged to be misbranded further in that the statement borne on the label, "Absolutely harmless to the most delicate skin," was false and misleading since it represented that the article was absolutely harmless to the most delicate skin; whereas it was not absolutely harmless to the most delicate skin but contained mercuric chloride, which is not absolutely harmless to the skin.

On March 1, 1938, a plea of nolo contendere was entered by the defendants and they were sentenced to pay fines in the total amount of \$50.

M. L. WILSON, *Acting Secretary of Agriculture.*

**29254. Adulteration and misbranding of saline-dextrose solution. U. S. v. 14 Bottles of Saline-Dextrose Solution. Default decree of condemnation and destruction. (F. & D. No. 42370. Sample No. 15392-D.)**

Samples of this article were found to be contaminated with viable mold and mold spores, whereas it should be sterile.

On May 19, 1938, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 14 bottles of saline-dextrose solution at Omaha, Nebr.; alleging that the article had been shipped in interstate commerce on or about September 8, 1937, from Kansas City, Mo., by the Haver-Glover Laboratories; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its purity fell below the professed standard and quality under which it was sold, namely, "Saline-dextrose Solution Each 500 cc contains d-Dextrose 10% Physiologic saline solution 90%."